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No. _____

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1993

R. V. TURNER, Individually in his former capacity as Superintendent of Glades Correctional Institution, CHESTER LAMBDIN, in his official capacity as Superintendent of Glades Correctional Institution,

Petitioners,

v.

ANTHONY LaMARCA, MARTIN SAUNDERS and EDWIN JOHNSON, individually and on behalf of all others similarly situated, and DAVID ALDRED, STEVE H. BRONSON, JR., EDDIE COBB, RON DURRANCE, and BILLY JOE HARPER, individually,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Whether a trial court may grant injunctive relief in a suit claiming that prison conditions violate the Eighth Amendment proscription against cruel and unusual punishment where there is no determination that the conditions complained of existed due to the wantonness or deliberate indifference of prison administrators responsible for such conditions.

Whether a trial court may grant injunctive relief in respect to prison conditions which intrudes into the administrative minutiae of prison operations and procedures and fails to defer to prison officials in the fashioning of concrete procedures to meet general goals.

Whether the Seventh Amendment requires a jury trial of certain issues in a claim upon which the right to jury trial was previously waived under the provisions of F.R.C.P. 38, but where that claim was subsequently joined in a suit with other claims to which the right of jury trial was preserved and where those certain issues are common to both the claim where the jury trial right was waived and the claims where the right was preserved.

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On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

PETITION FOR A WRIT OF CERTIORARI

The Petitioners, R. V. Turner, individually, and Chester Lambdin, in his official capacity, respectfully petition this Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit in this case.

OPINIONS BELOW

The opinion of the Court of Appeals (A1 - 52) is reported at 995 F.2d 1526 (CA 11 1993). The earlier decision of the Court of Appeals declining jurisdiction (A234 - 235) is noted without opinion at 861 F.2d 724 (CA 11 1988). The Phase I opinion of the District Court with Magistrate's Report and Recommendations (A59 - 233) is reported at 662 F.Supp. 647 (S.D. Fla. 1987). The Phase II opinion of the District Court (A236 - 268) is unreported.

JURISDICTION

The Court of Appeals entered its judgment on July 7, 1993 (A54). Petitions for rehearing and rehearing *en banc* were denied on October 4, 1993 (A272 - 275). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

The relevant texts of U.S. Const. Amend. VII, VIII and XIV(1) and 42 U.S.C. § 1983 are set forth in the Appendix (A289 - 290).

STATEMENT

The jurisdiction of the United States District Court, Southern District of Florida, was invoked under 42 U.S.C. § 1983 and 28 U.S.C. §§ 1331(a) and 1343(3) and (4).

This action for damages and injunctive relief was brought by several former inmates of Glades Correctional Institution (GCI), a large, close-security state prison in Palm Beach County, Florida. It was initiated by the filing of a *pro se* complaint on May 14, 1982, by Anthony LaMarca, a prisoner at GCI against R.V. Turner, Superintendent of the facility. (R1 - 1) Counsel subsequently appeared on LaMarca's behalf and filed an "Amended Complaint Class Action" on September 21, 1983, joining three additional inmates as individual plaintiffs – Martin Saunders, Edwin Johnson and Henry Rosenbaum – and Louie L. Wainwright, Secretary of the Florida Department of Corrections, as a defendant. (R1 - 23) This amended complaint sought money damages under 42 U.S.C. § 1983 for each of the four individual plaintiffs and injunctive relief for a class designated as all present and future inmates of GCI. The plaintiffs claimed to be victims of physical and sexual assaults and intimidation at the hands of other inmates at GCI, and charged that the defendants failed to provide conditions at the prison which adequately assured their safety. Turner and Wainwright, sued in both their individual and official capacities, filed their initial answer in this action on November 2, 1983; through this stage of the proceeding, no party made a demand for a jury trial. (R1 - 41)

On April 13, 1984, the District Judge certified a class, for injunctive relief only, consisting of all present and future inmates confined at GCI; inmates no longer at GCI were excluded from the class. (R1 - 47) Rosenbaum's claim was severed and abated, and the remaining three damage claims and the injunctive prayer were set for evidentiary hearing before a magistrate. (R1 - 61) Turner

retired as Superintendent of GCI in July, 1984, and was eventually succeeded, in October, 1984, by Randall Music. (R1 - 62)

In late August, 1985, approximately two months before the scheduled hearing, the plaintiffs moved for leave to file a second amended complaint, joining seven new Plaintiffs with individual damage claims: David Aldred, Steve H. Bronson, Eddie Cobb, Ron Durrance, Wayne Epprecht, Michael Gordon and Keith Harris. (R1 - 627) This new pleading dropped Wainwright as a defendant and joined Randall Music as a defendant, in his official capacity only, for purposes of the injunctive relief.

The defendants opposed joinder of the new plaintiffs in such close proximity in time to the evidentiary hearing, and filed notice of their intent to seek a jury trial on the claims. (R1 - 67) The Magistrate granted the plaintiffs' requested leave to amend on September 19, 1985; the defendants sought a continuance and responded to the second amended complaint with a motion for more definite statement. (R1 - 69, R2 - 73, 75) The Magistrate continued the hearing date four weeks, until December 2, 1985; the defendants moved for a jury trial and renewed their motion for continuance. (R2 - 80, 91) In the meantime, the plaintiffs sought leave to file a third amended complaint, dropping as plaintiff Keith Harris and joining a new plaintiff, Billy Joe Harper, and providing more specificity in their claims. (R2 - 93)

The Magistrate granted leave to file this third amended complaint on November 25, 1985, and simultaneously denied the continuance and the demand for jury trial as to all claims. (R2 - 105, A55) The defendants

thereafter answered this last complaint with a reiterated demand for jury trial on all claims, and appealed the Magistrate's ruling denying the continuance and jury trial demand to the District Judge who, in turn, denied relief on December 2, 1985. (R2 - 104, 112, A57)

Following two weeks of hearings (the Phase I hearings), the Magistrate issued a Report and Recommendation to the District Judge, essentially supporting the claims of all ten remaining plaintiffs on their individual damage claims.[1] (A102 *et seq.*) The District Judge sustained the recommendations in respect to the individual claims of eight plaintiffs – LaMarca, Saunders, Johnson, Aldred, Bronson, Cobb, Durrance and Harper – and rejected the recommendations as to two – Epprecht and Gordon – and denied their claims. Monetary damages were awarded to the eight, and the Court ordered the

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[1] Each of the plaintiffs' claims involved a separate event, unrelated to each other. In total, the claims spanned a period of some four years, from 1980 to July 1984. The claims and time periods were as follows: LaMarca claimed various instances of harassment from late 1980 through April, 1983; Saunders claimed to have been sexually assaulted in March, 1983; Johnson claimed several instances of sexual harassment and physical assaults at unspecified times in early 1983; Aldred claimed to have been sexually assaulted in July, 1984; Bronson claimed a sexual assault in June, 1982; Cobb was injured in a fight with another inmate in January, 1984; Durrance claimed to have been sexually assaulted in March, 1984; Epprecht was physically assaulted in February, 1981; Gordon was physically assaulted on several occasions in late 1983 to early 1984; Harper claimed a sexual assault in January, 1982. With the exception of Cobb and Saunders, each plaintiff's claim involved a different alleged assailant and each involved a different location within the prison.

establishment of two committees to recommend injunctive relief.[2] (A59 - 101)

Upon appeal, the Eleventh Circuit determined that the judgment was not yet final due to the nature of the ruling on injunctive relief. (A234) On remand, the District Judge dropped the committee concept and, on January 8, 1990, conducted a week-long hearing on the current conditions at GCI, taking evidence for the period from January 1986, the date of the Magistrate's Report, through January, 1990 (the Phase II hearing). (A239, 241) The Judge specifically declined to accept at this hearing additional evidence as to prison conditions during the earlier period considered in the Phase I hearing.[3] (A240) In December, 1986, Music had been replaced as Superintendent by Chester Lambdin, and Lambdin was substituted as a party defendant in his official capacity. (A240)

In his "Findings of Fact and Conclusions of Law" dated April 28, 1990, the District Judge found that conditions at GCI had " . . . changed so that much of the injunctive relief previously requested is no longer necessary." (A241) He further found that Lambdin was a ". . . dedicated public servant who is trying very hard to make

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[2] The Magistrate had "adjourned" full consideration of the class action, injunctive claim when the Plaintiffs indicated that they were not fully prepared to present evidence on the conditions current at GCI in 1985 under Randall Music.

[3] The Defendant, Turner, whose ability to respond to the claims of the plaintiffs due to their late-blooming multiplicity and general lack of specificity prior to the Phase I trial, subsequently proffered a substantial amount of documentary evidence which specifically refuted a number of conclusions drawn by the Magistrate in his Report. The proffer was declined.

GCI an efficient and effective institution." (A242) Nonetheless, because he found that conditions relating to inmate security, conditions in protective confinement, and the provisions for psychological counseling showed room for improvement, the District Judge ordered injunctive relief.[4] (A242) The order specified replacement and cleaning of opaque glass panes in the showers; enforcement by the administration of its rules requiring roving guard patrols; maintenance of metal detectors between two housing compounds and at the main gate of the compounds; elimination of double bunking in confinement cells; elimination of protective confinement stays in excess of 30 days; transfer of all inmates in protective confinement more than 30 days to other institutions; enforcement of a harsh, standard policy in respect to prisoners in possession of contraband drugs, alcohol and weapons; conduct of regular dormitory "shake downs"; disciplining, including termination, of staff members when contraband is discovered in the area of the prison under their responsibility; prompt investigations of all allegations of sexual assault and referral of cases to the state attorney; additional training in rape counseling for the staff psychiatrist and psychologists, and promulgation of a policy of referral of rape victims to counseling.[5] (A256 - 260)

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[4] The question of whether adequate psychological counseling was provided to those claiming to be rape victims was raised for the first time shortly before the January, 1990 hearing.

[5] Many of these provisions such as investigation of assaults and referral to the state attorney, referral of alleged rape victims to psychological counseling and patrol and search procedures were existing policies at GCI.

The Defendants appealed the final judgment which incorporated the monetary damages awarded in the first phase of this litigation and the injunctive relief ordered in the second phase.

The Court of Appeal, Eleventh Circuit, reversed in their entirety the damage awards to the five plaintiffs (Aldred, Bronson, Cobb, Durrance and Harper) whose claims were joined in the second and third amended complaints, finding that the Magistrate and District Judge had improperly denied the defendants' demand for a jury trial. (A45 - 46, 51) It affirmed denial of the demand for jury trial in respect to the claims of the three "original" plaintiffs (LaMarca, Johnson and Saunders) upon the ground of waiver, (A46) but remanded the judgements for these three plaintiffs for reconsideration, finding that the District Judge had failed to apply the proper standard for determining the subjective component of an Eighth Amendment violation under *Wilson v. Seiter*, ___ U.S. ___, 111 S.Ct. 2321, 115 L.Ed.2d 271 (1991) (A16 - 23); that he had erred in regarding the existence of adverse conditions at anytime during the four year period (1980 - 1984) as satisfying the objective element of all claims rather than those conditions found to exist in the time frame of each claim, (A31) and that he had erred in denying considerations of the defendants' proffer of additional evidence in the mistaken view that he lacked jurisdiction to consider it. (A51) In respect to the injunctive relief, the Court of Appeals noted that the District Judge had not made a determination that GCI currently failed to provide inmates with constitutionally adequate protection from violence, nor had he found that current conditions

in protective confinement violated the Eighth Amendment. (A35)[6] Nonetheless, the Court of Appeals upheld the District Judge's undertaking to grant injunctive relief upon the basis that he had the power to enjoin the recurrence of the unconstitutional conditions that he had found to exist during the period under consideration in the Phase I proceedings (1980-84). (A32 - 34) While thus approving the District Judge's action on injunctive relief in principle, the Court of Appeals found that certain of his prescriptions were overly intrusive,[7] (A37) or failed to address constitutional violations.[8] (A38) On the questions of psychological counseling, the Court of Appeals held that the District Judge has found a constitutional violation and that the record supported a finding that GCI was deliberately indifferent in failing to provide such counseling to rape victims.[9] (A38 - 39) It therefore affirmed the

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[6] The Court of Appeals noted that all parties' arguments on appeal were premised on the current constitutionality of such protection and, in fully reviewing the record, the Court of Appeals concurred with this premise.

[7] E.g., the requirement that Lambdin discipline guards.

[8] E.g., eliminations of double bunking, stays in confinement, transfer of confinement inmates and lighting conditions.

[9] The Plaintiffs did not claim that GCI lacked a mental health staff or that it refused requested mental health services. They contended that the policy at GCI was not "pro-active" and that the mental health professionals were not specifically trained in rape counseling. The uncontradicted evidence established that GCI had both psychiatric and psychological professionals and that Florida instituted a policy in 1987 at all prisons, including GCI, of referring inmates reporting sexual assaults to the mental health staff. Only one inmate claimed not to have had such a "pro-active" referral after that date; evidence on the issue as to his referral was contradictory.

injunctive relief granted on this last subject. It also affirmed a number of specific provisions of injunctive relief in respect to inmate safety despite the fact that they intruded into the sphere of adminstrative minutiae.[10]

REASONS FOR GRANTING THE PETITION

I.

THE COURT OF APPEALS' AFFIRMANCE OF THE DISTRICT COURT'S ISSUANCE OF INJUNCTIVE RELIEF CONFLICTS WITH DECISIONS OF THIS COURT AND OTHER COURTS OF APPEAL AND PRESENTS IMPORTANT ISSUES OF FEDERALISM AND CONSTITUTIONAL INTERPRETATION.

A direct and irreconcilable conflict exists between the Eleventh Circuit and the Supreme Court regarding the issue of injunctive relief in prisons. The Eleventh Circuit's Judgment in *LaMarca* also conflicts with orders entered by various other Courts of Appeal granting injunctive relief. The problems associated with the operation of prisons are widespread and constitute an important public interest.

> It is difficult to imagine an activity in which a State has a stronger interest, or one that is more intricately bound up with state laws, regulations, and procedures, than the administration of its prisons . . . . The strong considerations of comity that require giving a state court system

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[10] E.g., the maintenance and location of metal detectors, the use of specific search methods for location of contraband and the replacement and maintenance of glass windows for viewing into the shower areas in the dorms.

> that has convicted a defendant the first opportunity to correct the errors thus also require giving the States the first opportunity to correct the errors made in the internal administration of their prisons.

Preiser v. Rodrigues, 411 U.S. 475, 491-92, 93 S.Ct. 1827, 1837-38, 36 L.Ed.2d 439 (1973). *See also Rhodes v. Chapman*, 452 U.S. 337, 101 S.Ct. 2392, 69 L.Ed.2d 59 (1981).

A.

THE COURT OF APPEALS' AFFIRMANCE OF INJUNCTIVE RELIEF WHERE THERE WAS NO FINDING THAT THE CONDITIONS COMPLAINED OF EXISTED AS A RESULT OF WANTONNESS OF PRISON OFFICIALS CONFLICTS WITH THIS COURT'S RULING IN *WILSON V. SEITER* THAT SUCH A FINDING IS AN ESSENTIAL COMPONENT IN A DETERMINATION OF A CONSTITUTIONAL VIOLATION.

In *Wilson v. Seiter*, ___ U.S. ___, 111 S.Ct. 2321, 115 L.Ed.2d 271 (1991), this Court carefully laid out the analytical structure for consideration of claims brought under 42 U.S.C. § 1983 alleging that prison conditions violate the rights of inmates under the Eighth Amendment to the United States Constitution. Noting that the Amendment proscribes only the infliction of "cruel and unusual punishments", the *Wilson* opinion discerned two essential components of an Eighth Amendment violation wrought by conditions of confinement: an objective component consisting of the existence of conditions sufficiently harsh and inhumane to be regarded as "cruel and unusual" under contemporary societal norms, and a subjective component consisting of an intent, proven directly

or inferred from wantonness, by officials responsible for such conditions that they be inflicted on the inmates.

Finding this subjective component in the fact that the Eighth Amendment proscribes "punishment" and not merely harsh conditions, this Court quoted approvingly the observation of Judge Posner in *Duckworth v. Franzen*, 780 F.2d 645, 652 (CA 7 1985):

> The infliction of punishment is a deliberate act intended to chastise or deter. This is what the word means today, it is what it meant in the eighteenth century.

Wilson 111 S.Ct. at 2325.

Under *Wilson's* analysis, the finding of both components is essential in establishing the existence of a constitutional violation. Thus, absent the requisite subjective element of intent, prison conditions – harsh though they may be – cannot constitute cruel and unusual *punishment* and, consequently, cannot violate the Eighth Amendment.

The Court of Appeals in the decision below, acknowledges the dual component requirement of *Wilson*, but treats it as addressing ultimate liability for damages rather than as the prior analytical step in determining the existence of a constitutional violation. As a consequence, its decision effectively denies the necessity of determining intent or wantonness on the part of prison officials as a predicate for the granting of injunctive relief – which, of course, it must be if it is an essential element in forming the constitutional violation. In so doing the Court of Appeals decision misconstrues the effect of, and conflicts with the holding in, *Wilson*.

In reviewing the District Court's grant of injunctive relief, the Court of Appeals acknowledged that where, as here, the basis for invoking the use of Federal judicial power is an alleged constitutional violation by state authorities, "federal-court decrees exceed appropriate limits if they are aimed at eliminating a condition that does not violate the Constitution or does not flow from such a violation . . . " *Milliken v. Bradley*, 433 U.S. 267, 282, 97 S.Ct. 2749, 2758, 53 L.Ed.2d 745 (1977). *See also Swann v. Charlotte - Mecklenburg Board of Education*, 402 U.S. 1, 16, 91 S.Ct. 1267, 1276, 28 L.Ed.2d 554 (1971). Accepting as a premise that the District Court's injunctive power could only have been exercised in this case upon a determination that conditions at GCI at some time violated the Eighth Amendment's prohibition against cruel and unusual punishment, the Court of Appeals affirmed the lower Court's grant of injunctive relief in general – although it reversed the injunctive order in certain particulars – on the basis that the present prison administration " . . . had not taken sufficient steps to ensure that GCI's past wrongs would not be repeated." (A33) In reviewing the District Court's injunctive order, and in its own independent review of the Phase II record, the Court of Appeals concluded that the current conditions at GCI respecting both inmate safety and the conditions in confinement did not violate constitutional standards. It further concluded that the failure to provide rape counselling had been held by the District Court to violate constitutional standards and that such a finding was

supported by the record.[11] Nonetheless, the Court of Appeals affirmed the District Court's exercise of its injunctive power in all three areas, including inmate safety and protective confinement conditions, on the ground that:

> The district court, in the damages phase of the case, found that GCI failed to provide inmates with reasonable protection from violence.
>
> (A33)

and that:

> When a defendant corrects the alleged infirmity after suit has been filed, a court may nevertheless grant injunctive relief unless the defendant shows that absent an injunction, the institution would not return to its former, unconstitutionally deficient state.
>
> (A32)

In its same opinion, however, the Court of Appeals had determined that the District Court's findings in Phase I (the damages phase) had failed to establish that the defendant had exhibited wantonness in accord with the standard prescribed in *Wilson v. Seiter*, supra. Thus all that remained of the Phase I findings to support a determination of unconstitutionality of prior conditions at GCI was, at most, the District Court's abstract holding as to the "objective unreasonableness" of those conditions in

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[11] The District Court had considered the issuance of injunctive relief in respect to three broad areas of conditions: inmate safety, protective confinement and rape counselling.

respect to the claims of three claimants.[12] The necessary conflict with *Wilson* is thus manifest: *Wilson* holds that an Eighth Amendment violation is shown in a prison conditions case only when the presence of both the objective component and subjective component of "cruel and unusual punishment" are established; the Court of Appeals in *LaMarca* – which acknowledges the necessity of the existence of a constitutional violation, either currently or "historically", to support the grant of injunctive relief – holds that the required finding of a constitutional violation was satisfied solely by the Phase I finding of "objective unreasonableness" of the conditions at GCI and without the determination, in either Phase I or Phase II, of the subjective component of wantonness on behalf of those responsible for overseeing prison conditions.[13]

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[12] The Court of Appeal's remand of these claims (those of the "original plaintiffs") for reconsideration included an instruction that the District Court redetermine whether the conditions were "objectively unreasonable" at the relevant time frame for each claim; while it did not necessarily reverse the finding that at some point between 1980 - 84 the conditions were "objectively unreasonable" such a finding is, at present, unconnected to any claim. (See also ftn. 29 in the Court of Appeals opinion, A33)

[13] In the third area of prison conditions addressed by the trial court's injunction – the matter of rape counselling – the Circuit Court commented that, "(t)he [trial] Court found that GCI unnecessarily and wantonly inflicted pain upon prisoners by failing to provide them with post-rape psychological or psychiatric counselling." In form this appears to satisfy the *Wilson* standard in respect to this one area in which relief was granted; in fact the District Court's order fell far short of meeting that standard. It's finding on this subject was as follows:

> e) In light of the past and present circumstances at GCI, and the findings of psychological problems

Nor was this conflict with the essential holding in *Wilson* a mere oversight, for the precise implications of the Court of Appeal's ruling was raised in the Defendant's petition for rehearing which was denied by the Court. It must be concluded, therefore that the Eleventh Circuit views the rule in *Wilson* to be that an Eighth Amendment violation is established whenever there is a finding of objective unreasonableness of prison conditions and that the finding of an element of wantonness on the part of prison officials is necessary only as an additional element necessary to establish a damage claim brought against those officials in their individual capacities. Where the claim is one for injunctive relief against the institution or against the prison officials in their official capacity, it appears to be the clear holding of this case that relief may be granted when the only finding is that the conditions are unreasonably harsh and when there is no finding that the prison administration intended to impose these conditions on the inmates.

If Wilson correctly discerns that the subjective and objective elements are essential components of an Eighth Amendment violation, then both elements must be found before either injunctive or damage relief may be granted. *See Helling v. McKinney*, ___ U.S. ___, 113 S.Ct. 2475 (1993).

> accompanied by homosexual assault in a prison setting, the court finds that the GCI officials have a duty to protect the health of rape victims within their compound. The failure to do so will surely result in the unnecessary and wanton infliction of pain. (A253)

Such a "finding" clearly falls short of a proper determination of existing intent or deliberate indifference by prison officials necessary to establish a constitutional violation.

By contrast, the effect of the Circuit rule here, which permits the intrusion of the District Courts into prison administration upon no more than a finding of the harshness of prison conditions, will be to open the door to the use of injunctive process even in the absence of a constitutional violation. Such a rule has broad implications. The District Courts will become, to a greater extent than previously foreseen, super-administrators of the States' prison systems. See *Bell v. Wolfish*, 441 U.S. 520, 562, 99 S.Ct. 1861, 1886, 60 L.Ed. 447 (1979).

B.

THE COURT OF APPEALS AFFIRMANCE OF CERTAIN SPECIFIC ITEMS OF INJUNCTIVE RELIEF CONFLICTS WITH THE PRINCIPLES LAID DOWN IN THIS COURT'S HOLDING IN *BELL V. WOLFISH* AND ILLUSTRATES THE CONTINUING CONFLICT AMONG THE CIRCUITS AS TO WHAT CONSTITUTES AN IMPROPER INTRUSION INTO THE DETAILS OF PRISON ADMINISTRATION BY THE DISTRICT COURTS.

This Court recognized that many courts have:

> . . . become increasingly enmeshed in the minutiae of prison operations. Judges, after all, are human. They, no less than others in our society, have a natural tendency to believe that their individual solutions to often intractable problems are better and more workable than those of the persons who are actually charged with and trained in the running of the particular institution under examination. But under the Constitution, the first question to be answered is not whose plan is best, but in what branch of the Government is lodged the authority to initially

> devise the plan. This does not mean that constitutional rights are not to be scrupulously observed. It does mean, however, that the inquiry of federal courts into prison management must be limited to the issue of whether a particular system violates any prohibition of the Constitution . . . . The wide range of "judgment calls" that meet constitutional and statutory requirements are confided to officials outside of the Judicial Branch of Government.

Bell v. Wolfish, 441 U.S. 520, 562, 99 S.Ct. 1861, 1886, 60 L.Ed.2d 447 (1979).

While many Courts of Appeal have approved the granting of injunctive relief in the area of prison operation, they have done so with caution. Federal courts lack the power to interfere with decisions made by state prison officials, absent constitutional violations. See *Swann v. Charlotte-Mecklenberg Board of Education*, 402 U.S. 1, 91 S.Ct. 1267, 28 L.Ed.2d 554 (1971); *Milliken v. Bradley*, 433 U.S. 267, 97 S.Ct. 2749, 53 L.Ed.2d 745 (1977). "The function of a Court is limited to determining whether a constitutional violation has occurred . . . and to fashioning a remedy that does no more and no less than correct that particular constitutional violation." *Hoptowit v. Ray*, 682 F.2d 1237, 1246 (CA 9 1982).

Importantly, the Courts have given prison officials the opportunity to propose the methods necessary to alleviate the unconstitutional conditions. "In contrast to the vast majority of Federal judges, prison administrators possess a wealth of penological expertise and experience that qualifies them to supervise, discipline and rehabilitate inmates within the ever-changing, complex prison

system." *Godinez v. Lane*, 733 F.2d 1250, 1262 (CA 7 1984). In recognition of the expertise required and principles of comity and federalism, other courts have deferred to parties to propose remedies. See *United States v. Michigan*, 940 F.2d 143 (CA 6 1991); *Eng v. Smith*, 849 F.2d 80, 83 (CA 2 1988); *Cody v. Hilliard*, 599 F.Supp. 1025 (D.S.D. 1984), *rev'd in part on other grounds* 830 F.2d 912 (CA 8 1987). Addressing a myriad of issues related to prison administration including, but not limited to inmate security, medical needs, housing, access to the law library and confinement, these decisions all leave to prison officials the ultimate details of correcting the constitutional violations. The above decisions of the Supreme Court and other Courts of Appeal indicate an unwillingness to permit judges to engage in micromanagement of prison operations.

However, some courts have refused to defer to prison officials to remedy constitutional violations once identified. *Gluth v. Kangas*, 951 F.2d 1504 (CA 9 1991); *Toussaint v. McCarthy*, 801 F.2d 1080 (CA 9 1986); *French v. Owens*, 777 F.2d 1250 (CA 7 1985). These cases involved issues similar to those where courts deferred to prison officials to fashion relief. The conflict becomes even more clear because once courts determine the need for injunctive relief, they are not uniform in the nature of relief ordered. It is difficult to reconcile the relief ordered in *LaMarca, Gluth, Toussaint* and *French* with the relief ordered in other courts which has been limited to the ordering of policies and procedures instead of mapping out the details of prison operations. *See Hoptowit, supra; Jones v. Diamond*, 636 F.2d 1364, 1383 (CA 5 1981); *Cody v. Hilliard*, 830 F.2d 912 (CA 8 1987). It is left to this Court to resolve

this conflict and clarify the role of the courts in remedying constitutional violations.

The decision in *LaMarca* is erroneous and unduly intrusive in two respects. First, the Eleventh Circuit upheld aspects of the District Court's grant of injunctive relief although the trial court failed to defer to prison officials to fashion the remedies. Secondly, the relief ordered was specific and highly intrusive, interfering with the daily operation of the prison. Location and maintenance of metal detectors and the type and transparency of glass in the showers and methods of search and patrol are exactly the types of operations minutiae that certain other circuits have refrained from dictating. Similarly, the training of guards or staff are details of prison administration that the Ninth Circuit has specifically refused to mandate. *Hoptowit, supra* at 1250. However, the Eleventh Circuit, herein, has affirmed the District Court's order requiring training for guards in handling of rape complaints. This relief is overly broad, requiring each prison guard to be trained to take rape complaints where alternative procedures – such as having at least one person able to handle this task present at the institution at all times – would equally suffice. The requirement that both the psychiatrist and the psychologist be specially trained to provide rape counselling is similarly intrusive into the operation of the prison. Competent rape counselling may be properly provided by either the psychiatrist, the psychologist or other mental health personnel depending upon the specific operational plans of the institution. Certainly, these remedies are not the least intrusive methods to accomplish the District Court's goal. The relief affirmed by the Eleventh Circuit

clearly indicates that design and implementation of remedies are tasks best left to the state authorities who have the necessary specialized knowledge and training in the area of prison administration.

The Eleventh Circuit has exceeded its authority and ruled contrary to the principles laid down by this Court and other Courts of Appeal in affirming various aspects of injunctive relief ordered by the District Court. An order of injunctive relief in one prison may have a widespread effect on prisons and prison administrators throughout the nation, as they suffer uncertainty about whether or not the Courts in their Circuit potentially could subject them to the same type of intrusive injunction affirmed by the Eleventh Circuit. This uncertainty would hamper prison officials in operating their respective institutions due to the fear of judges second-guessing decisions about minor details. The importance of this issue and its potential influence on prison operations nationwide require the Supreme Court to resolve the conflict and confusion among the circuits.

II.

THE AFFIRMANCE OF THE DISTRICT COURT'S DENIAL OF A JURY TRIAL UPON THOSE ISSUES IN THE CLAIM OF THE "ORIGINAL PLAINTIFFS" WHICH ARE COMMON TO THE ISSUES IN THE CLAIMS OF THE "NEW PLAINTIFFS" CONFLICTS WITH THE PRINCIPLE ENUNCIATED IN THIS COURT'S DECISION IN *LYTLE V. HOUSEHOLD MANUFACTURING* SINCE IT WILL HAVE THE EFFECT OF ALLOWING THE TRIAL COURT'S DETERMINATION OF THE ISSUES IN THE FORMER CLAIMS TO CONTROL THE DETERMINATION OF THE ISSUES IN THE LATTER.

The Circuit Court decision below correctly determined that the District judge had erred in denying the

defendants' demand for jury trial upon the claims of the "new plaintiffs" joined in the second and third amended complaints since, as to these claimants, the defendant's demand was timely under F.R.C.P. 38(b).[14] It affirmed, however, the District judge's denial of a jury trial upon all issues in the claims of the "original plaintiffs" – LaMarca, Johnson and Saunders – on the ground that the defendants had not timely sought a jury trial as to these claimants, and that there was no constitutional implication in the determination of the issues of these claims by the court. This last holding is in direct conflict with the principles set down by this Court in the case of *Lytle v. Household Manufacturing*, 494 U.S. 545, 110 S.Ct. 1331, 108 L.Ed.2d 504 (1990), for allowing the non-jury determinations to stand upon any issues in the claims of the "original plaintiffs" which are common to the issues in the claims of the "new plaintiffs" will, through the effect of issue preclusion, effectively deny the right of the defendants to a jury trial of those common issues on the claims of the "new plaintiffs."

Each claim by each plaintiff presented a series of issues, most of which were unique to each claim; one issue, however, possessed elements common to the claims of certain of the "original plaintiffs" and certain of the "new plaintiffs."[15]

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[14] Of the eight "new plaintiffs" joined in these two pleadings, one was voluntarily dropped and the claims of two were denied on the merits; five remain: Aldred, Bronson, Cobb, Durrance and Harper.

[15] The non-common issues include whether each alleged assault occurred; whether it was causally related to any unconstitutional conditions, the damages sustained by any plaintiff,

Among the "original plaintiffs", LaMarca's claims were predicated upon allegedly unconstitutional conditions at GCI existing from late 1980 through April 1983.

Among the "new plaintiffs", Bronson's claim was based upon allegedly unconstitutional conditions in June, 1982 and Harper's claim was based upon conditions in January, 1982. Clearly, there is an overlap of this issue between the claims of LaMarca and the claims of Bronson and Harper since they each concern a common time frame. By permitting the determination of the issues relating to unconstitutionality of conditions in LaMarca's claim to be determined non-jury threatens the right of the defendant, Turner, to have the issues relating to unconstitutionality of conditions in Harper's and Bronson's claim decided by a jury.

In *Beacon Theaters, Inc. v. Westover*, 359 U.S. 500, 79 S.Ct. 948, 3 L.Ed.2d 988 (1959) and *Dairy Queen Inc. v. Wood*, 369 U.S. 469, 82 S.Ct. 894, 8 L.Ed.2d 44 (1962) this Court determined that where joined claims involve common issues, some of which are triable as of right by a jury and others which, due to the equitable nature of the claims, are triable non-jury, the determination of the issues by the jury must prevail. In *Lytle*, a case involving claims brought by a plaintiff under 42 U.S.C. § 2000*e et seq.* ("Title VII" claims which, at the time, were triable non-jury) and 42 U.S.C. § 1981 (claims for which a right to jury trial exists), the separate claims involved certain

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and, in respect to several of the claims (those occurring after the Spring of 1983) the issues of the objective unreasonableness of condition and wantonness on the part of Turner.

common issues. The trial judge improperly dismissed the claim brought under 42 U.S.C. § 1981 and resolved the issues on the claim brought under Title VII against the plaintiff. The Court of Appeals affirmed the findings on the Title VII claims, but noted that the dismissal of the claim under 42 U.S.C. § 1981 was erroneous; however, since the claims had common issues, and since the determination of those issues in the Title VII claim foreclosed liability under 42 U.S.C. § 1981, it affirmed. This Court reversed the dismissal of the claim under 42 U.S.C. § 1981 and, to avoid the operation of issue preclusion by the prior decision on the Title VII claim, reversed the latter and ordered that the trial court's determination of the issues in that claim be subordinated to the jury's determination of the issues in the claim under 42 U.S.C. § 1981.

The present case parallels *Lytle* with near precision: here there were certain claims upon which the defendant had a clear right to jury trial (the claims of the "new plaintiffs") and certain claims upon which the defendant did not – because of a prior waiver – retain the right to a jury trial (the "original plaintiffs"). As noted, some of these claims had common issues. Under *Lytle*, the determination of those common issues on the claim of at least one of the "original plaintiffs" should be subordinated to the jury's determination now required on the claims of the "new plaintiffs." The failure of the Court of Appeals to reverse the findings as to the LaMarca claim and to require that its determination be subordinated to the resolution of common issues in the claims of Bronson and Harper jeopardizes the constitutional right of the defendant, Turner, to a jury trial as to the latter claims. The Court of Appeals statement that such a constitutional

basis does not exist for requiring a jury resolution of the common issues on the LaMarca claim conflicts directly with *Lytle* where this court found that the Seventh Amendment is indeed implicated in such situations.

CONCLUSION

The Petitioners respectfully request that this Court grant the writ of certiorari.

Respectfully submitted,

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